



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

October 3, 2021

By ECF

The Honorable Edgardo Ramos
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Neil Cole
19 Cr. 869 (ER)

Dear Judge Ramos:

The defendant is represented by Lorin Reisner, Richard Tarlowe and Andrew Reich of the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP. Assisting counsel of record in this representation is Amanda Weingarten, an associate at the same firm. The Government understands that Ms. Weingarten is in the process of applying for a position as an Assistant United States Attorney in the Southern District of New York, and her application remains pending. As a result of Ms. Weingarten's application, and the potential conflict of interest that it presents, the Government encloses a proposed set of questions for the Court to pose at pursuant to *United States v. Curcio*, 680 F.2d 881 (2d Cir. 1982). These questions are designed to both advise the defendant of his right to a counsel with no such potential conflict and to confirm on the record that the defendant is prepared to go forward with his current representation.¹

¹ Defense counsel has indicated to the Government that they have discussed Ms. Weingarten's application to the U.S. Attorney's Office with the defendant, and the defendant has consented to Ms. Weingarten's continuing to work on the case.

The Government respectfully requests that the Court conduct the appropriate *Curcio* inquiry prior to the commencement of trial.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

By: /s/
Scott Hartman
Noah Solowiejczyk
Andrew Thomas
Assistant United States Attorneys
(212) 637-2357 / 2473 /2106

cc: Defense counsel (by ECF)

Enclosure

The Government's Proposed *Curcio* Hearing Questions

The Government respectfully requests the Court to include the following questions in its examination of Neil Cole, the defendant, pursuant to the procedures outlined in *United States v. Curcio*, 680 F.2d 881 (2d Cir. 1982).

Introductory Questions

1. Are you feeling well enough to proceed today?
2. Are you currently under the influence of alcohol or drugs of any kind? (*If yes, do these impair your ability to understand today's proceedings?*)
3. Can you see and hear me?
4. Do you understand what I am saying?

Circumstances of Representation

5. Are you currently represented by Lorin Reisner, Richard Tarlowe, and Andrew Reich of the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP?
6. Are you aware that Amanda Weingarten, Esq., who also works at the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, has been involved in assisting with your representation?
7. Do you know that Ms. Weingarten has applied for a position with the United States Attorney's Office for the Southern District of New York — that is, the Office that is currently prosecuting you?

Right to Conflict-Free Counsel

8. Do you understand that you have the right to the assistance of a lawyer whose loyalty to you is undivided and not subject to any factor that might intrude upon their loyalty to you?
9. Do you understand that Ms. Weingarten's application for employment with the United States Attorney's Office for the Southern District of New York creates the potential that she may have allegiances to interests that may be adverse to your own interests?

Discussions With Counsel Re: Potential Conflicts

10. Have you discussed these conflict-of-interest matters, including the risks associated with continuing to have Ms. Weingarten as part of your defense team, with Mr. Reisner and Mr. Tarlowe?
11. Are you satisfied with your current attorneys' representation of you?

12. Are you satisfied with the advice Mr. Reisner and Mr. Tarlowe have given you on this conflict-of-interest matter?

Opportunity to Seek Advice of Other Counsel

13. Do you understand that you have a right to consult with a lawyer other than your current attorneys from Paul, Weiss, Rifkind, Wharton & Garrison LLP in order to determine whether you wish for your current attorneys to continue to represent you?
14. Would you like the opportunity to consult with another attorney?

The Defendant's Understanding and Waiver

15. Mr. Cole, have you had an adequate opportunity to consider the matters I have talked about, whether you want the lawyers from Paul, Weiss, Rifkind, Wharton & Garrison LLP to continue to represent you, and whether you want to waive your right to counsel who is not laboring under any potential conflicts of interest?
16. Is there anything that the Court has said that you wish to have explained further? Is anything unclear?
17. Do you still wish to proceed with the lawyers from Paul, Weiss, Rifkind, Wharton & Garrison LLP, including Ms. Weingarten, as your attorneys in this case?
18. Do you understand that, if you decide to continue with Ms. Weingarten as part of your defense team, you will not be able to complain later that her allegiances were divided?
19. Do you agree to waive any and all future arguments, on appeal or otherwise, that you were denied effective assistance of counsel because of Ms. Weingarten's pursuit of a position as a federal prosecutor with the U.S. Attorney's Office for the Southern District of New York?
20. Has anyone promised you anything or made any threats to influence your decision?
21. Are you making this choice voluntarily and of your own free will?